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40.51 Coordinating Proceedings in Different Courts

[caption]

Order No. _____

It appearing that [the above-styled cases] [the cases listed on Attachment _____] share common issues with, and will involve common discovery with, certain cases pending in _____ [list other court(s)] (the “related actions”), and that pretrial proceedings in all these cases should be coordinated to avoid unnecessary conflicts and expense, conserve judicial resources, and expedite the disposition of all the cases, this court, after having consulted with counsel [and being advised that similar orders will be entered in such other court(s)¹], ORDERS:

1. Designated Counsel²

- (a) *Plaintiffs’ Lead and Liaison Counsel.* _____ and _____ are designated as plaintiffs’ lead counsel and plaintiffs’ liaison counsel, respectively, in this court, with the responsibilities prescribed in [Attachment _____] [see section 40.21, paragraphs 1 and 2]. They may serve in similar capacities in the related cases if so authorized or permitted by the courts in which such cases are pending and, in any event, shall endeavor to coordinate activities in these cases with those in the related cases.
- (b) *Defendants’ Liaison Counsel.* _____ is designated to serve as defendants’ liaison counsel with the responsibilities prescribed in [Attachment _____] [see section 40.21, paragraph 4]. Defendants’ liaison counsel may serve in a similar capacity in the related cases if so authorized or permitted by such courts and, in any event, shall endeavor to coordinate activities in these cases with those in the related cases.
- (c) *Compensation.* Attorneys designated as lead or liaison counsel by this court and the other courts shall be entitled to reasonable compensation and reimbursement of expenses for services performed in such capacities, equitably apportioned among the parties in these and the related cases benefiting from such services. This court will cooperate with the other courts in making appropriate orders for such compensation and reimbursement if agreement

cannot be reached between such counsel and the parties for whom they are acting.

2. Discovery³

- (a) *Joint Document Depositories.* The document depositories prescribed in [Exhibit _____] [see section 40.261] shall be established for the joint use of parties in these related cases. [Subject to agreement regarding the sharing of expenses,] counsel in the related cases shall have access to the documents in such depositories to the same extent as counsel in the cases in this court. Parties will not make new requests for production of documents in these proceedings if such documents have already been produced and are available to them in the related cases.
- (b) *Confidential Documents.* Counsel in the related cases shall have access to confidential documents produced under the confidentiality order entered in this court [see, e.g., section 40.27] on the same terms and conditions as counsel in the cases in this court. Counsel in the cases in this court obtaining access to documents marked confidential under similar orders entered in other courts shall be subject to the terms and conditions of such orders.
- (c) *Depositions.* Depositions of persons whose testimony will likely be relevant both in these cases and in the related cases should ordinarily be cross-noticed for use in all such cases. [The parties in the cases before this court are directed to show cause within 60 days why the depositions previously taken in the related cases should not be usable in this court, subject to the right to conduct supplemental examination on a showing of need.]

3. *Consistency of Rulings.* To avoid unnecessary conflicts and inconsistencies in the rulings of this and the other courts on matters such as discovery disputes and scheduling conflicts,

[Alternate 1—Deferral to Prior Rulings]

This court will adopt a ruling already made on such matters by another court in a related case unless a different ruling is shown to be mandated by the laws and rules governing this court or justified by particular circumstances of the cases before this court.

[Alternate 2—Lead Case]

Such disputes will initially be presented in case no. _____, pending in _____ [name of court] _____, and the ruling made in that case will be given effect in all [other] cases in this court unless a different ruling is shown to be [mandated by the laws and rules governing this court or] justified by particular circumstances of such cases.

[Alternate 3—Joint Special Master]

_____ is appointed under Fed. R. Civ. P. 53(a)(1)(C) to serve as Special Master in these cases (and, under similar appointments by the other courts, in the related cases) (1) to assist the respective courts in preparing and monitoring schedules and plans for coordinated conduct of discovery and

other pretrial proceedings; (2) to recommend to the respective courts appropriate resolution of discovery disputes, including controversies regarding limitations on the scope or form of discovery and questions regarding claims of privilege and confidentiality; and (3) to facilitate proper cooperation and coordination among counsel.

[Alternate 4—Joint Hearings]

This court will be prepared to conduct consolidated hearings and pretrial conferences with judges of the courts where related cases are pending and to enter joint rulings (except to the extent differences may be mandated by different laws or rules governing the courts or justified by special circumstances in the various cases).

4. *Other Litigation.* Upon application, these provisions may be ordered applicable to cases involving the same common issues subsequently filed in other courts.

Dated: _____

 United States District Judge

Attachments [omitted]

Notes:

1. The terms of coordination between the affected courts should ordinarily be arranged—either by direct consultation between the judges of the courts or indirectly through counsel—before this type of order is entered, and, if feasible, parallel orders should be entered by the various courts. See *supra* sections 20.14, 20.31. References to coordinated proceedings have also been incorporated in several forms. See, e.g., *supra* sections 40.29 and 40.3.

2. This form provides for appointment of lead counsel and liaison counsel for plaintiffs, but only liaison counsel for defendants. In some cases, the same organizational structure will be appropriate both for plaintiffs and for defendants.

3. Depending on the circumstances, it may be appropriate to condition access to discovery materials either on a reciprocal obligation or on payment of fair compensation for a share of the services involved in gathering the information. See section 20.312 for a discussion of mechanisms for allocating compensation among federal and state litigants. For examples of orders allocating fees among federal and state attorneys based on a coordinated approach, see *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litigation*, Pretrial Order No. 467 (E.D. Pa. Feb. 10, 1999). See also *In re Baycol Prods. Liab. Litig.*, MDL No. 1431, Pretrial Order No. 25 (D. Minn. June 5, 2002).

40.52 Mass Tort Case-Management Order

[caption]

Order No. _____
(Standard Procedures)¹

It appearing that [the above-styled cases] [cases listed in Attachment _____] involve claims of death, personal injury, economic damages, punitive damages, and other claims of damage arising as a result of [exposure to] [use of] [_____ products] [the incident occurring at _____ on ____ [date] ____] and that other similar actions may be filed in or transferred to this court in the future, the court ORDERS:

1. *Filing of Order.* A copy of this order shall be filed in each such case. In cases subsequently filed, a copy will be provided by the clerk to each plaintiff at the time of the filing of the complaint and will be served with the complaint on any defendant not previously a party in these cases. [In cases subsequently removed or transferred to this court, a copy will be provided by the clerk to each new party upon removal or transfer.]
2. *Pretrial Consolidation.* All cases in this litigation are consolidated for pretrial purposes. This is not a determination that any of these actions should be consolidated for trial.
3. *Types of Cases.* By order of the Judicial Panel on Multidistrict Litigation (MDL Panel), numerous proposed class actions to remedy economic injuries alleged to have been caused by ____ [insert product name] ____ have been transferred to this court for coordinated pretrial proceedings. These cases and any proposed class actions that are subsequently filed or transferred to or filed in this proceeding are referenced as Class Action Cases.

Numerous individual personal injury and wrongful death cases have also been transferred to this court for coordinated pretrial proceedings. These cases and any additional personal injury/wrongful death cases, brought on behalf of individual claimants, filed in or transferred to this court are referenced as “Personal Injury Cases.” [Insert and define any additional types of cases that are distinct and may call for separate management.]

4. *Presentation of Test Case Remand Motions.* Plaintiffs’ liaison counsel in personal injury cases shall consult with plaintiffs’ counsel and identify for the court no more than _____ [e.g., five] cases in which motions for remand to state court based on an arguable absence of federal subject-matter jurisdiction have been filed or are expected to be filed. These remand motions should, as nearly as possible, be representative of the various remand issues raised in the personal injury cases in this MDL litigation. In addition, plaintiffs’ counsel may identify one case in which a motion to remand the case to the transferor court for trial has been made. Plaintiffs’ Liaison Counsel shall submit to the court by ____ [date] ____ the names and indi-

vidual case docket numbers of the cases identified as representative of the remand issues in this MDL proceeding. The court will set a schedule for briefing or supplemental briefing of the remand motions in those cases and place these motions on an expedited schedule for decision.

5. *Filing Papers with the Court.* The purpose of the following instructions is to reduce the time and expense of duplicate filings of documents through use of a master case file, while at the same time not congesting the master case with miscellaneous pleadings and orders that are of interest only to the parties directly affected by them. It is not intended that a party lose any rights based on a failure to follow these instructions.
 - (a) *Master Docket and File.* The clerk will maintain a master docket and case file under the style “*In re* _____ Product Liability Litigation (MDL-XXXX)” as master file number [CV NN-1000-X]. Orders, pleadings, motions, and other documents bearing a caption similar to that of this order will, when docketed and filed in the master case, be deemed to have been docketed and filed in each individual case to the extent applicable and will not ordinarily be separately docketed or physically filed in such individual cases. However, the caption may also contain a notation indicating whether the document relates to all cases or only to specified cases.
 - (b) *Separate Filing.* A document that relates only to a specific case and would not be of interest except to the parties directly affected by it—such as an amended complaint adding a party or a motion to dismiss a party—should bear the caption and case number of that case rather than of the master case file. Such a document will be docketed and filed in that case and not in the master case file. Please note that cases removed or transferred to this court are assigned a new case number in this court.
 - (c) *Leave to Add Parties.* Until otherwise directed, plaintiffs are granted leave, without need for any special motion or order, to add other plaintiffs to any pending (or subsequently filed, removed, or transferred) case if all plaintiffs in the case (1) will be represented by the same counsel (or if counsel for existing plaintiffs consent to the intervention), (2) are suing the same defendants, and (3) [were exposed to defendants’ products] in the same state. The purpose of this authorization is to avoid unnecessary filing fees and the delays inherent in 28 U.S.C. § 1407 transfers. The joinder of such parties will not be viewed as affecting subsequent motions by either plaintiffs or defendants for separate trials under Federal Rule of Civil Procedure 42(b).
6. *Master Pleadings, Motions, and Orders*
 - (a) *Master/Sample Complaints.* Plaintiffs’ steering committee has filed in this district [CV NN-10000-X]:
 - (1) a master complaint containing allegations that would be suitable for adoption by reference in individual cases,
 - (2) a sample complaint illustrating how allegations from the master complaint can be incorporated into an individual case, and

- (3) a master class action complaint containing allegations that encompass the entire range of allegations and types of proposed class actions contained in individual cases filed in this court or transferred to this court by the MDL panel.

The allegations of the master complaint and the master class action complaint are not deemed automatically included in any particular case. However, in order to avoid possible problems with statutes of limitations or doctrines of repose, it shall be deemed (except to the extent a plaintiff thereafter files an amended complaint disavowing such claims and theories or limits its claims and theories to those contained in an amended complaint) that, as of this date, for cases now pending in this court (or as of the date other cases are filed in, removed to, or transferred to this court) a motion is filed in each such case to amend the complaint to add any potentially applicable claims and theories from the master complaint not contained in the complaint actually filed in that case.

- (b) *Master Answers.* By _____, each entity listed below will file in [CV NN-1000-X] a master answer that incorporates its defenses in law or fact to claims made against it in the various actions that are presently pending in this litigation, including any cross-claims it makes against other defendants. The answer will not attempt to provide a cross-reference to particular paragraphs or counts of the various complaints. The answer will, however, in a “generic” manner admit or deny (including denials based on lack of information and belief) the allegations typically included in claims or cross-claims made against it as well as make such additional allegations as are appropriate to its defenses or cross-claims. This may be done through allegations such as “It alleges that it is incorporated in State A; that it has its principal place of business in State B; that during the period from (date) to (date) it manufactured, sold, and distributed products intended to be used in _____; that these products were intended to be used only by trained, knowledgeable _____ and were accompanied by warnings and instructions that adequately explained such risks as were inherent and unavoidable in the products; that these products were not unreasonably dangerous, were suitable for the purposes for which they were intended, and were distributed with adequate and sufficient warnings; that it is without knowledge or information at this time sufficient to form a belief as to any averment that one of its products was used in the procedure on which the plaintiff’s complaint is based; that to the extent the plaintiff makes a claim for X (or under statute Y) it is not liable because _____; etc.”
- (1) When so filed in [CV NN-1000-X], these answers constitute an answer in each constituent case now pending or when hereafter filed in, removed to, or transferred to this court except to the extent the defendant later files a separate answer in an individual case.

- (2) A defendant not listed below may also file a master answer in [CV NN-1000-X] by [date] , or within 45 days after the first case in which it is named as a defendant is filed in, removed to, or transferred to this court.
 - (c) *Refinement of Pleadings.* It is anticipated that an amended, more specific complaint and answer may be required before a case is scheduled for trial or remanded to a transferor court, but amendments of pleadings prior to that time should generally be avoided.
 - (d) *Motions; Orders.* A motion, brief, or response that has a potential effect on multiple parties (e.g., documents submitted in connection with a motion for partial summary judgment asserting that punitive damages are not recoverable with respect to [the product's use] in State A) will be deemed made in all similar cases on behalf of, and against, all parties similarly situated except to the extent such other parties timely disavow such a position. Additional motions, briefs, or responses addressed to such issues should not be filed or submitted by other parties except to the extent needed because of inadequacy of the original papers, to present unique facts, or because of a difference in positions. Orders resolving such motions will likewise be deemed as made with respect to all parties similarly situated unless the order indicates otherwise.
7. *Service of Original Complaints; Amendments Adding Parties*
- (a) *Acceptable Service.* Exhibit is a list of the “National Defendants”—that is, those entities that have frequently been named as defendants in these cases filed throughout the United States—with the name and address of their national counsel and information provided by national counsel indicating the state(s) in which they are incorporated, in which they have their principal place of doing business, and in which they will or may contest personal jurisdiction. To eliminate disputes over service of process and reduce the expense of such service, these defendants [have agreed] [shall inform the court within days as to whether or not they agree] to accept service of process in these cases (without, however, waiving any objections to personal jurisdiction or venue) if a copy of the summons and complaint is sent, by certified mail, return receipt requested, to the person or address shown in Exhibit . Defendants’ agreement [report to the court] should indicate whether it applies to any case involving [insert product] claims filed in any federal district court or in any state court of general jurisdiction.
 - (b) *Extension of Time to Serve.* Notwithstanding Fed. R. Civ. P. 4(m), plaintiffs shall have thirty days after the date of this order (or, if later, thirty days after the date a case is subsequently filed in, removed to, or transferred to this court) in which to effect service on defendants.
8. *Motions*
- (a) *Meet and Confer.* To avoid unnecessary litigation concerning motions, including motions relating to discovery disputes, counsel are directed to meet and confer before filing a motion. In any motion filed, counsel for the moving party must certify that a good-faith effort was made to resolve the dispute.

(b) *Motions Under Federal Rules of Civil Procedure 11, 12, and 56.* No motion shall be filed under Rule 11, 12, or 56 without leave of court.

9. *Inactive [Product] [Incident] Docket.* The purpose of this paragraph is to establish a procedure for separating cases in which the plaintiff has little or no physical impairment from cases with more serious impairments to assist the court in establishing priorities for managing its docket. The intent is to toll the operation of any applicable statutes of limitation or repose while a case is listed as inactive. The clerk shall establish a separate file called the “Inactive [product] [incident] Docket,” which shall consist of (1) cases voluntarily dismissed pursuant to a general stipulation prepared by plaintiffs and defendants that sets forth their agreement that such cases can be revived if specific conditions are met, and (2) claims initiated by a “Notice of Claim” procedure. To invoke the notice procedure, a claimant must file an “Affidavit of Notice of Claim” that includes (1) the name(s), address(es), and marital status of the claimant(s); (2) a brief statement of circumstances of claimant’s exposure(s) to the [product] [incident] giving rise to the common claims; (3) a statement of the nature of the injury, disease, or condition alleged to have been caused by the [product] [incident]; and (4) the names of the entities to be given notice and whom the claimant proposes to serve.

Upon certification of the claimant(s) that notices have been sent to all listed defendants in the manner set forth in the stipulation of agreement signed by plaintiffs’ and defendants’ representatives, the claims shall be recorded on the inactive docket.

The filing of the Notice of Claim or the voluntary dismissal pursuant to the stipulation shall toll all applicable statutes of limitation or repose regarding any claims of the plaintiff or plaintiff’s spouse, children, dependents, heirs, or estates arising relating to the exposure to [product] [incident]. Claims may be removed from the inactive docket at any time by the filing and serving of a complaint. Signing the stipulation referred to above signifies the consent of each signing party to this procedure and to the tolling of the statutes of limitations or repose as described above.

10. *Settlement*

[Insert any special provisions to facilitate settlement, such as appointment of a settlement judge or special master to assist the parties, a timetable for scheduling settlement conferences, or procedures for using arbitration, minitrials, or summary jury trials. Also include any provision for contributions by later-settling parties to compensate designated counsel for services previously rendered.]

11. *Discovery*

[In addition to the orders presented below, see separate discovery orders in section 40.25 through 40.29.]

- (a) *Plaintiff Fact Sheets.*² Each plaintiff whose case has been transferred to this court shall have ____ days from the entry of this order to complete and serve on defendants a plaintiff fact sheet and an authorization for release of medical records. Counsel shall meet and confer to agree on an electronic format for completion of the Fact Sheet. Transferred plaintiffs shall have ____ days from

the date of this order to produce all documents requested in the fact sheet. When defendants notify the MDL panel of additional cases for transfer to this court, defendants shall serve plaintiffs in those cases with a copy of this order. The information contained in the plaintiff fact sheet must be verified under oath. Plaintiffs' responses will be treated as answers to interrogatories under Fed. R. Civ. P. 33 and requests for production of documents under Fed. R. Civ. P. 34 and must be supplemented in accordance with Fed. R. Civ. P. 26.

- (b) *Document Requests.* Within ____ days of entry of this order, plaintiffs must serve on defendants a master set of requests for production of documents. Any objections [that have not been dealt with in other cases in this litigation] to those document requests must be served within ____ days after receipt of the requests. Defendants will begin producing documents not subject to objection on a rolling basis upon entry of this order. The parties will meet and confer regarding a schedule for the orderly production of different categories of documents. The parties will seek to coordinate this schedule with document productions in pending state court proceedings.
- (c) *Expedited Discovery.* Expedited discovery of plaintiffs and plaintiffs' health care providers will be allowed when all of the following condition exist:
1. the plaintiff or a member of plaintiff's immediate family is terminally ill;
 2. there is an urgent need to record and preserve the testimony because of the gravity of the illness; and
 3. plaintiff has fully completed the plaintiff fact sheet and provided the execution of medical authorizations required in the fact sheet and defendants have had a reasonable opportunity to conduct informal discovery prior to the taking of a deposition.

Dated: _____

United States District Judge

Notes:

1. See *supra* section 22.2.
2. For examples of plaintiff fact sheets, see *In re Baycol Products Litigation*, MDL 1431, Pre-trial Order No. 10 (D. Minn. Mar. 18, 2002) and *In re Phenylpropanolamine (PPA) Products Liability Litigation*, MDL No. 1407, Case Management Order No. 6 (W.D. Wash. Mar. 21, 2002).

40.53 CERCLA Case-Management Order

[caption]

Order No. _____

It is ORDERED:

1. *Limited Consolidation.* Until further order of the court, the above-captioned actions, Civil Action No. _____ and Civil Action No. _____ (collectively, the “Actions”), are consolidated before the undersigned for the limited purposes of coordinated case management and discovery.
2. *Lodging of the Administrative Record; Stay of Administrative Record Discovery.* On or before ____ [date] ____, plaintiff, the United States of America, will lodge with the court the administrative record developed by the Environmental Protection Agency (“EPA”) in connection with the initial Remedial Investigations and Feasibility Studies (RI/FS) for the _____ Landfill (the “Landfill”); on or before ____ [date] ____, _____ plaintiff, the United States of America, will lodge with the court the administrative record developed by the EPA in connection with the record of decision (including the Supplemental Feasibility Study). No discovery shall be permitted at this time as to what documents constitute or will constitute these administrative records until further Order of the court.
3. *Temporary Stay of Counterclaims, Cross-Claims, and Third-Party Claims.* Until ____ [date] ____, the date established herein for the second case-management conference, no counterclaims, cross-claims, or third-party claims in either of the Actions, and no claims related to the Landfill by defendants in one of the Actions against defendants in the other of the Actions, shall be filed. The stay as to counterclaims and third-party claims shall be addressed at the second case-management conference. All counterclaims, cross-claims, or third-party claims filed prior to the entry of this order are stayed until the second case-management conference.
4. *Filing of Claims.* At the second case-management conference, scheduled herein, the court will establish a schedule for filing of the claims referred to in paragraph 3. Nothing in this order shall prejudice the right of any defendant in either of the Actions to assert any such claims, nor shall any such claims be barred by laches or by any statute of limitations by virtue of the delay in filing such claims required by this order.
5. *Realignment of Pleadings.* The United States of America, in Civil No. _____, and the State Department of Environmental Protection, in Civil No. _____, are hereby granted leave to file amended complaints, not later than ____ [date] ____, without the necessity of a motion. The purposes of these amended complaints are to cure misnomer problems; to add defendants; to dismiss defendants already named, without prejudice; to conform the defendants named in the two amended com-

plaints to the degree that the plaintiffs deem appropriate; and to clarify the causes of action, demands, and relief sought in the amended complaints to the degree that the plaintiffs deem appropriate. Existing defendants who have already answered or otherwise responded to the complaint need not answer or otherwise respond to the amended complaint unless they choose to do so. All other defendants shall answer or otherwise respond within the time provided in the Rules.

6. *Joinder of New Parties.* Except as provided herein or by subsequent order, no party may join an additional party in this case. The joinder of new parties may occur through the amendment of the complaints (see ____ above), or by the coordinated efforts of the defense litigation committee to be formalized by the defendants. The defense litigation committee will serve as a clearinghouse for information pertinent to identifying new parties through coordinated discovery efforts. Discovery with respect to joining new parties is discussed in paragraphs ____ below. No later than ____ [date] ____, the defense litigation committee shall have assembled a list of new parties whose joinder will be considered at the second case-management conference on ____ [date] ____.

To the extent feasible, this listing shall be selective, seeking joinder of parties with a relatively higher degree of alleged responsibility and continuing viability, and avoiding joinder of parties with a relatively lower degree of alleged responsibility or which are of doubtful viability. It is anticipated that leave to file a consolidated third-party complaint joining the new parties in an orderly fashion, and leave for individual defendants to file contractual indemnification claims, will be granted at the second case-management conference. [There will be an additional opportunity to join further new parties in the future as the cases unfold.]

7. *Amendments.* The goal of the amended complaints and the consolidated third-party complaint is to have a more unified and orderly set of pleadings and joinders so that these Actions may go forward expeditiously.
8. *Scope of Discovery.* Discovery shall be limited at present to the following issues:
 - (a) Identification of new parties.
 - (b) Quantity, quality, and nexus of parties' wastes to the ____
____ Landfill.

[It is anticipated that parties providing full discovery on these issues and believing themselves to have no nexus of hazardous wastes to the Landfill will be permitted to seek summary judgment in the near future.]

No discovery is permitted at this time regarding issues of "release or threatened release" at the Landfill, or of "the incurring of response costs consistent with the NCP at the Landfill." Enlarging discovery to these issues, and the precise extent, timing, and appropriateness of summary judgment motion practice relating to some or all liability issues, will be considered at the second case-management conference, following lodging of the administrative records under _____, above.

Forms of Discovery

9. *Document Production.* Production of documents shall be coordinated and go forward promptly and responses shall be served within _____ days of service. The deposition of representatives of the EPA, the DEP [State Department of Environmental Protection], or a defendant shall not go forward until that party has responded to the document production request upon it.
10. *Depositions.* Depositions are permitted at this time only with respect to the issues of identification of new parties and quantity, quality, and nexus. Such depositions may be taken, on these issues, of existing parties and nonparties, except that no depositions of representatives of the EPA or the DEP or of a defendant are permitted until that party has timely responded to the document production request upon it. Scheduling of depositions on behalf of defendants will be coordinated between the plaintiffs and the defense litigation committee, endeavoring to conduct not more than one deposition at a time.
11. *Procedure for Scheduling Depositions*

12. *Interrogatories to Plaintiffs.* The plaintiffs shall serve certified responses to a common set of interrogatories, derived from the set of interrogatories served by _____ on behalf of fourteen defendants, pertaining to quantity, quality, nexus, and identification of additional parties, within _____ days after service, to the same extent as if served on behalf of all _____ defendants in the United States case and all _____ defendants in the state case. All other interrogatories are stricken, without prejudice, and need not be answered.
13. *Interrogatories to Defendants.* The plaintiffs may propound a set of common interrogatories on the above issues upon each of the defendants, each of whom shall serve certified responses to same within _____ days after service.
14. *Requests for Admission.* Requests for admission shall not be served until further order of the court, to be discussed at the second case-management conference.
15. *Liaison Counsel for Defendants.* The court recognizes the defendants' selection of _____, _____, as liaison counsel for defendants with respect to communications from the court to the defendants.
16. *Service List.* Liaison counsel for the defendants shall prepare and promptly file with the clerk the service list containing the names, addresses, and telephone and facsimile numbers of attorneys appearing in this case and of unrepresented parties.
17. *Cooperation Among Defendants; Defense Litigation Committee.* Cooperation efforts among defendants in the Actions for the purpose of coordinating discovery, trial, counsel, or otherwise minimizing expenses in the Actions are being conducted at the direction of the court for its convenience in the resolution of the Actions and they shall not constitute evidence of conspiracy, concerted action, or any other wrongful conduct in this or any other proceeding. The defendants are hereby directed to take reasonable steps to eliminate duplication of effort and redundant

discovery. The defendants have also informed the court that they have selected and will continue to organize a defense litigation committee, the duties of which shall be better defined before the interim status conference on _____ [date] at _____.

18. *Privileges Preserved.* All information and/or documents exchanged among the defendants in the Actions shall be communicated for the limited purpose of assisting in a common defense in this litigation only, and such exchange shall not constitute a waiver of any attorney–client work product, trade secret, or other privilege. All discussions will be treated as not admissible into evidence in accordance with the terms of Fed. R. Evid. 408.
19. *Cooperation Between Plaintiffs and Exchange of Information.* Exchange of information and/or documents between the plaintiffs relating to the prosecution of these actions is communication for the limited purpose of assisting in a common cause and shall not constitute a waiver of whatever attorney–client, work product, enforcement-sensitive, or any other privilege, if any, may apply.
20. *Preservation of Documents.* All parties and their counsel are hereby directed to preserve any information in their possession, custody, or control that constitutes or contains material or information that may be relevant in these Actions. All parties and their counsel are directed to take all reasonable steps to communicate the requirements of this provision to the individuals employed by that party who must know of this provision in order for it to be effective. Plaintiffs shall instruct their RI/FS contractors and subcontractors (and any other of plaintiffs’ contractors and subcontractors) to preserve all such information.

Dated: _____
United States District Judge

40.54 Civil RICO Case-Statement Order¹

[caption]

Order No. _____

It is ORDERED:

The proponent of the civil RICO claim shall file and serve [within _____ days of _____] a case statement that shall include the facts relied on to initiate the RICO claim. In particular, the statement shall use the numbers and letters set forth below, unless filed as part of an amended and restated pleading (in which latter case, the allegations of the amended and restated pleading shall reasonably follow the organization set out below), and shall state in detail and with specificity the following information:

1. State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c), and/or (d). If you allege violations of more than one section 1962 subsection, treat each as a separate RICO claim.
2. List each defendant, and state the alleged misconduct and basis of alleged liability of each defendant.
3. List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.
4. List the alleged victims, and state how each victim allegedly was injured.
5. Describe in detail the pattern of racketeering activity or collection of an unlawful debt alleged for each RICO claim. A description of the pattern of racketeering activity shall:
 - (a) list the alleged predicate acts and the specific statutes allegedly violated by each predicate act;
 - (b) state the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding each predicate act;
 - (c) if the RICO claim is based on the predicate offenses of wire fraud, mail fraud, fraud in the sale of securities, or fraud in connection with a case under Title 11 of the U.S. Code, the “circumstances constituting fraud or mistake shall be stated with particularity,” Fed. R. Civ. P. 9(b) (identify the time, place, and contents of the alleged misrepresentation or omissions, and the identity of persons to whom and by whom the alleged misrepresentations or omissions were made);
 - (d) describe in detail the perceived relationship that the predicate acts bear to each other or to some external organizing principle that renders them “ordered” or “arranged” or “part of a common plan”; and

- (e) explain how the predicate acts amount to or pose a threat of continued criminal activity.
6. Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall
 - (a) state the names of the individuals, partnerships, corporations, associations, or other entities allegedly constituting the enterprise;
 - (b) describe the structure, purpose, roles, function, and course of conduct of the enterprise;
 - (c) state whether any defendants are employees, officers, or directors of the alleged enterprise;
 - (d) state whether any defendants are associated with the alleged enterprise, and, if so, how;
 - (e) explain how each defendant participated in the direction of the affairs of the enterprise;
 - (f) state whether you allege [(i) that the defendants are individuals or entities separate from the alleged enterprise, or (ii) that the defendants are the enterprise itself, or (iii) that the defendants are members of the enterprise]; and
 - (g) explain, if you allege any defendants to be the enterprise itself or members of the enterprise, whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.
 7. State whether you allege, and describe in detail, how the pattern of racketeering activity and the enterprise are separate or have merged into one entity.
 8. Describe the alleged relationship between the activities and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.
 9. Describe what benefits, if any, the alleged enterprise and each defendant received from the alleged pattern of racketeering activity.
 10. Describe the effect of the activities of the enterprise on interstate or foreign commerce.
 11. If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:
 - (a) state who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and
 - (b) describe the use or investment of such income.
 12. If the complaint alleges a violation of 18 U.S.C. § 1962(b), provide the following information:
 - (a) describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise; and
 - (b) state whether the same entity is both the liable “person” and the “enterprise” under section 1962(b).

13. If the complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:
 - (a) state who is employed by or associated with the enterprise; and
 - (b) state whether the same entity is both the liable “person” and the “enterprise” under section 1962(c).
14. If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.
15. Describe the alleged injury to business or property.
16. Describe the relationship between the alleged injury and violation of the RICO statute.
17. List the damages sustained by reason of the violation of section 1962, indicating the amount for which each defendant allegedly is liable.
18. Provide any additional information you feel would be helpful to the court in processing your RICO claim.

Dated: _____
United States District Judge

Note:

1. This order has been designed to establish a uniform and efficient procedure for deciding civil actions containing claims made pursuant to 18 U.S.C. §§ 1961–1968 (“civil RICO”).